

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CECILIA DELA CRUZ and HEROHITO  
DELA CRUZ,

Plaintiffs,

v.

HSBC BANK USA, N.A., et al.,

Defendants.

Case No. 2:12-cv-01283-MMD-PAL

ORDER

(Plf.'s Motion for Certification – dkt. no. 33;  
Plf.'s Notice of Voluntary Dismissal  
– dkt. no. 35)

Before this Court are Plaintiffs Cecilia Dela Cruz and Herohito Dela Cruz's Motion for 54(b) Certification (dkt. no. 33) and Notice of Voluntary Dismissal (dkt. no. 35).

This case arises out of a foreclosure proceeding initiated on Plaintiffs' home. The factual background is summarized in the Court's April 23, 2013 Amended Order. (See dkt. no. 36.) After the Court dismissed with prejudice all claims against Defendants, with the exception of those that are subject to an automatic bankruptcy stay, Plaintiffs filed a Notice of Appeal seeking review of the Court's dismissal. (See dkt. no. 31.) On March 6, 2013, the Clerk of the Ninth Circuit issued an order to show cause as to why the appeal should not be dismissed for lack of jurisdiction, noting that the Court's dismissal order did not dispose of the action as to all claims and all parties. (See dkt. no. 34-1.) Thereafter, Plaintiffs filed a motion seeking judgment under Fed. R. Civ. P. 54(b), presumably to allow them to appeal. (See dkt. no. 33.) Nevertheless, the notice of appeal "confer[red] jurisdiction on the court of appeals and divest[ed this Court] of control over those aspects of the case involved in the appeal." *Griggs v. Provident*

1 *Consumer Discount Co.*, 459 U.S. 56, 58 (1982). As the appeal has yet to conclude, the  
2 Court is without jurisdiction to entertain Plaintiffs' Motion.

3 Similarly, the Court is without jurisdiction to review Plaintiffs' Notice of Voluntary  
4 Dismissal. (See dkt. no. 35.) Although Plaintiffs seek to voluntarily dismiss Defendant  
5 GMAC Mortgage, LLC ("GMAC") without court order, which is permitted by Fed. R. Civ.  
6 P. 41(a)(1), this Court lacks jurisdiction over Plaintiffs' claims against GMAC until the  
7 termination of Plaintiffs' appeal.

8 Accordingly, IT IS HEREBY ORDERED that Plaintiffs Cecilia Dela Cruz and  
9 Herohito Dela Cruz's Motion for 54(b) Certification (dkt. no. 33) is DENIED.

10 IT IS FURTHER ORDERED that Plaintiffs are to re-file any Rule 41 notices or  
11 motions with this Court after resolution of Plaintiffs' appeal before the Ninth Circuit.

12 ENTERED THIS 6<sup>th</sup> day of May 2013.

13  
14 

15 MIRANDA M. DU  
16 UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28